

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

INFOGROUP, INC., infoUSA, Inc., and infoUSA Marketing, Inc., Delaware corporations,	)	No.
	)	
Plaintiffs,	)	COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES
	)	
v.	)	
	)	
WILLIAM SPAN, MICHAEL GUNTER, and LEADPRODUCERS LLC, a Washington limited liability company,	)	
	)	
Defendants.	)	

Plaintiffs Infogroup, Inc., infoUSA, Inc., and infoUSA Marketing, Inc., bring this Complaint for Injunctive Relief and Damages against Defendants William Span, Michael Gunter, and LeadProducers LLC, and allege as follows:

**I. THE PARTIES**

1. Plaintiffs Infogroup, Inc., infoUSA, Inc., and infoUSA Marketing, Inc. (collectively “Infogroup”), are Delaware corporations with their principal place of businesses in Omaha, Nebraska.

2. Defendant William Span is a citizen of Washington who, on information and belief, resides in Kirkland, Washington. Defendant Span is an owner of LeadProducers LLC, which purportedly sells mortgage leads through a website called leadproducers.net. Mr. Span also operates the websites secretsalesformula.com, supremesalesmaster.com, and costnet.com, through which he advertises access to numerous business lead databases.

1           3. Defendant Michael Gunter is, on information and belief, a citizen of North  
2 Carolina. Mr. Gunter is a Sales Manager at LeadProducers and conducts business in  
3 Washington, where LeadProducers is located. Mr. Gunter is also listed as the primary point of  
4 contact on the secretsalesformula.com website.

5           4. Defendant LeadProducers LLC, is a Seattle-based, Washington limited liability  
6 company. On information and belief, Mr. Span formed LeadProducers in 2000 as a mortgage  
7 lead business. LeadProducers operates the website leadproducers.net.

## 8                                   II. JURISDICTION AND VENUE

9           5. Infogroup brings this action for an injunction and damages to stop Defendants  
10 from misappropriating Infogroup's trade secrets and infringing on Infogroup's trademarks  
11 through Defendants' unauthorized access to and sales of Infogroup's databases, and through  
12 their marketing of Infogroup's databases as their own.

13           6. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1367  
14 because Infogroup asserts violations of the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a), the  
15 Copyright Act, 17 U.S.C. § 501 *et seq.*; and the Consumer Fraud and Abuse Act, 18 U.S.C.  
16 § 1030 *et seq.*

17           7. The Court has personal jurisdiction over Defendants Span and LeadProducers  
18 based on their presence within this judicial district and over all Defendants based, upon  
19 information and belief, on their transaction of business and other activities within the Western  
20 District of Washington.

21           8. Venue in this Court is proper under 28 U.S.C. § 1391(b) because a substantial  
22 part of the events giving rise to the claims alleged in this Complaint occurred in this judicial  
23 district, and on information and belief, Defendants Span and LeadProducers reside in this  
24 judicial district.

### III. FACTUAL ALLEGATIONS

#### A. Infogroup's Data Compilations Are the Product of Significant Effort and Expense, are Subject to Reasonable Security Measures, and Derive Independent Economic Value From Being Secrets.

9. Infogroup, a database marketing company in the business of compiling and maintaining unique compilations of information about businesses and consumers, was established in 1972. Infogroup collects, combines, and analyzes business and consumer information, marketing data, and digital engagement solutions for sales, marketing, and business professionals around the world.

10. Infogroup currently maintains demographic, marketing, and related information on approximately 210 million consumers, 17 million U.S. businesses, and 12 million executives. It collects data from a multitude of original public and proprietary sources, including demographic and marketing information on consumers and businesses. Infogroup then uses proprietary analytical systems and tools to accurately and comprehensively categorize millions of consumers and businesses into compilations of data sets.

11. Infogroup's products and services include data compilation, direct marketing, list management, sales leads, mailing lists, interactive marketing, email marketing, analytics, and data processing.

12. Infogroup's data and marketing solutions help its customers, which include companies of all sizes, find new prospects, deepen relationships with existing customers, and reach businesses and consumers at home, at work, and online.

13. Infogroup sells access to those proprietary lists of businesses and consumers using convenient websites enabled by powerful, user-friendly computer programs. It licenses access to those databases to a few major online services under security arrangements designed to ensure that the databases cannot be copied.

14. Over the years, Infogroup's business data has become a nationally recognized resource. It is used by the top Internet search engines, vehicle navigation, and on-board assistance systems to power their Point-of-Interest and business search capabilities.

1 Infogroup's database customers also include federal, state, and local government agencies,  
2 emergency services and first responders, libraries, universities, and public and private  
3 institutions of all types.

4 15. Amassing and maintaining comprehensive databases on such a national scale  
5 with high quality and accuracy is a Herculean task. Infogroup maintains a staff of more than  
6 400 data professionals just to collect and keep its databases accurate and current. Infogroup's  
7 work includes identifying new sources of data, procuring those data sources, testing and  
8 qualifying the sources, confirming accuracy, converting the sources, identifying and solving  
9 overlap between sources, and applying proprietary methods to maximize coverage efficiently.

10 16. To maintain the accuracy of the data, Infogroup's databases are updated  
11 continually. This process includes applying proprietary modeling and algorithms to data from a  
12 multitude of sources to insure that accurate data elements are included in the databases.  
13 Infogroup engages in ongoing and constant efforts to verify and re-verify data through a variety  
14 of automated and human methods.

15 17. Infogroup takes reasonable efforts to maintain the secrecy of its database  
16 listings. Only a limited number of employees within Infogroup are allowed access to this  
17 information. Through an electronic security system, Infogroup protects its internal computer  
18 network from outside access. Infogroup requires employees with access to proprietary  
19 databases to sign nondisclosure agreements. Infogroup also strictly controls the licensing and  
20 resale of its databases. In addition, Infogroup's customers only obtain limited licenses to  
21 access Infogroup's data compilations, and must have authorized usernames and passwords to  
22 access that information.

23 18. Between the hundreds of people it employs and the millions of dollars it spends  
24 to ensure its listings are of the greatest value to its customers, Infogroup expends significant  
25 effort and expense on its databases.

26 19. Infogroup's time-tested processes and innovations for collecting, compiling, and  
27 distributing its data have created a reputation within the industry for accuracy and quality.

20. Infogroup's data compilations have independent economic value from not being known to others, specifically to Infogroup's competitors.

**B. Developing Infogroup's Proprietary, Six-Digit Standard Industrial Classification ("SIC") Codes Required Significant Effort and Creativity.**

21. As part of its data compilation efforts, Infogroup has created a detailed listing of business types, based on the U.S. government's four-digit Standard Industrial Classification ("SIC") codes.

22. To allow for more detailed and refined descriptions and breakdowns of business types within particular industries, Infogroup has taken these standard listings and expanded them to add business descriptions and to add two Infogroup-specific digits to the four-digit codes, creating unique six-digit codes. Developing Infogroup's expanded and unique six-digit codes resulted from significant effort, time, and creativity on the part of Infogroup.

23. To protect against unauthorized use of Infogroup's industry description and six-digit-code organizational structure, Infogroup applied for and received copyright registration on the industry-listing code compilation. Infogroup owns valid copyright registration Nos. TXu 1-860-574, TXu 1-860-589, TXu 1-860-582, and TX 7-718-631. *See Exs. A-D.*

**C. Infogroup Uses Seed Data to Protect Its Proprietary Data Compilations.**

24. Infogroup has spent decades and considerable time and money cultivating its reputation, goodwill, and relationships with its customers. To enhance its goodwill with customers, Infogroup maintains highly confidential and detailed records of its customers, including purchasing history and, with respect to businesses, the identity of the person responsible for making purchases. This compilation of business data has significant value by not being known to Infogroup's competitors.

25. To protect its proprietary data compilations, Infogroup incorporates into its lists records known as "seed data." Seed data are fictitious listings (e.g., fictitious businesses) that Infogroup invents. When Infogroup seed data appear in lists provided by other vendors, those appearances indicate that these other vendors have obtained Infogroup's proprietary data

1 compilations.

2 26. To police the unauthorized use or reselling of its proprietary data compilations,  
3 Infogroup from time to time orders lists from other database marketing companies to conduct  
4 data investigations that include a search for Infogroup seed data.

5 27. In February 2013, Infogroup updated its listing of U.S. businesses and included  
6 various seed data records unique to the February 2013 listings.

7 28. In the summer of 2013, Infogroup undertook a series of routine investigations to  
8 police unauthorized use of its data compilations. The investigations included, without  
9 limitation, having its personnel attempt to purchase copies of business data compilations from  
10 third parties, and analyzing those purchased compilations for Infogroup seed data.

11 **D. Defendants Are Unlawfully Accessing, Marketing, and Reselling**  
12 **Infogroup's Data Compilations.**

13 29. On information and belief, Mr. Span owns LeadProducers LLC, and operates  
14 various websites, including leadproducers.net, costnet.com, secretsalesformula.com, and  
15 supremesalesmaster.com, through which he markets and sells numerous business leads  
16 databases.

17 30. On information and belief, Mr. Gunter is a Sales Manager at LeadProducers and  
18 the primary point of contact for data or business lead inquiries or sales through the  
19 secretsalesformula.com website.

20 31. On information and belief, LeadProducers is a Seattle-based company that  
21 advertises itself as a mortgage lead business through the website leadproducers.net.

22 32. In late September/early October 2013, Infogroup personnel ordered databases  
23 from the costnet.com website and secretsalesformula.com website from Mr. Span and Mr.  
24 Gunter.

25 33. In the process of ordering those databases, an Infogroup employee  
26 communicating with Defendants regarding the database purchases obtained emails from  
27 [mikegunter23@gmail.com](mailto:mikegunter23@gmail.com) advertising Defendants as selling the "INFOUSA business data

base,” and providing a link to InfoUSA’s own YouTube channel (<http://www.youtube.com/watch?v=3OOxTXoInlQ>), entitled, “InfoUSATube – Data Quality,” as the source of information regarding how the data had been compiled.

34. The same Infogroup employee who purchased databases from Defendants received an email from [bill\\_span@yahoo.com](mailto:bill_span@yahoo.com), identifying the database files as in fact being Infogroup files, with filenames such as: “INFOUSA 4-2013-1.rar.”

35. Upon receiving the databases it had ordered from Defendants, Infogroup determined the two databases were identical and were copies of its February 2013 database. Infogroup also identified its fictitious seed data within the databases.

36. Defendants are not authorized to possess, use, advertise, or resell any portion of Infogroup’s proprietary data compilation in any form.

37. In addition to the presence of Infogroup’s fictitious seed data in the databases received from Defendants, Infogroup confirmed the databases were also organized and categorized using Infogroup’s copyrighted industry descriptors and six-digit codes.

38. Defendants are not authorized to reproduce or distribute copies of Infogroup’s copyrighted industry descriptors and associated six-digit codes, or its unique and creative arrangement of data and business and consumer listings.

#### IV. CAUSES OF ACTION

##### COUNT I

##### False Designation of Origin and Unfair Competition Lanham Act, 15 U.S.C. § 1125(a)

39. Infogroup realleges and incorporates by this reference each and every allegation set forth in the paragraphs above.

40. Infogroup’s name is a distinctive name that is associated with Infogroup and that exclusively identifies Infogroup’s business, products, and services.

41. Defendants have used and continue to use Infogroup’s name in connection with goods or services in commerce.

42. Defendants' use of Infogroup's name is likely to cause confusion, mistake, or deception as to its affiliation, connection, or association with Infogroup.

43. In addition, Defendants' use of Infogroup's name is likely to cause confusion, mistake, or deception as to the origin, sponsorship, or approval of Defendants' goods, services, or commercial activities.

44. As a result of their wrongful conduct, Defendants are liable to Infogroup for violation of this provision of the Lanham Act.

45. Each Defendant also has contributory and vicarious liability for these acts. With knowledge of the illegal activity, each Defendant intentionally engaged in the conduct described above and continued to undertake in these acts. Similarly, each Defendant had the right and ability to control the illegal activity and received a direct financial benefit from the activity.

46. Infogroup has been damaged by these acts in an amount to be proven at trial. Infogroup is also entitled to injunctive and other equitable relief against Defendants.

**COUNT II**  
**False Advertising**  
**Lanham Act, 15 U.S.C. § 1125(a)**

47. Infogroup realleges and incorporates by this reference each and every allegation set forth in paragraphs above.

48. Defendants have used and continue to use Infogroup's name in connection with goods or services with false or misleading descriptions or representations of fact in Defendants' commercial advertising or promotion.

49. In particular, Defendants have made and are making a false statement of fact in commercial advertising about their own or another's product, the statement actually deceived or has the tendency to deceive a substantial segment of its audience, the deception is material, Defendants caused the false statement to enter interstate commerce, and Infogroup has been or is likely to be injured as a result of the false statement, either by direct diversion of sales from itself to Defendants, or by a lessening of the goodwill associated with its products.





1 right and ability to control the illegal activity and received a direct financial benefit from the  
2 activity.

3 58. Defendants acted intentionally and willfully in infringing on Infogroup's  
4 trademark with knowledge that the imitation was intended to be used to cause confusion,  
5 mistake, or deception.

6 59. Defendants' infringement has caused and will continue to cause damage to  
7 Infogroup, in an amount to be proven at trial, and is causing irreparable harm to Infogroup for  
8 which there is no adequate remedy at law.

9 60. Infogroup is entitled to recover damages and costs, in an amount to be proven at  
10 trial, as well as statutory and treble damages, attorneys' fees, and injunctive relief.

11 **COUNT IV**  
12 **Copyright Infringement**  
**Copyright Act, 17 U.S.C. § 101 et seq.**

13 61. Infogroup realleges and incorporates by this reference each and every allegation  
14 set forth in paragraphs above.

15 62. A database is a copyrightable compilation under 17 U.S.C. § 103. Further,  
16 Infogroup's selection and categorization of its listings satisfies the constitutional requirements  
17 for copyright protection.

18 63. Defendants possessed, used, marketed, and sold Infogroup's copyrighted listings  
19 of industries, economic categories, and accompanying unique six-digit codes without  
20 Infogroup's authorization.

21 64. Defendants' activities in copying Infogroup's listings constitute copyright  
22 infringement in violation of the Copyright Act, 17 U.S.C. § 501.

23 65. Infogroup is entitled to injunctive relief, as Defendants' activities have caused  
24 and will continue to cause irreparable injury and other damages, for which no adequate remedy  
25 exists at law.

26 66. Defendants' infringement of Infogroup's copyright was willful and intentional.  
27

67. Each Defendant also has contributory and vicarious liability for these acts. With knowledge of the illegal activity, each Defendant intentionally engaged in the conduct described above and continued to undertake in these acts. Similarly, each Defendant had the right and ability to control the illegal activity and received a direct financial benefit from the activity.

**COUNT V**  
**Violation of the Computer Fraud and Abuse Act**  
**18 U.S.C. § 1030 *et seq.***

68. Infogroup realleges and incorporates by this reference each and every allegation set forth in paragraphs above.

69. Infogroup maintains its proprietary databases on a protected computer system. Infogroup uses this computer system to produce and provide mailing lists and other information to customers in interstate commerce across the United States, and to United States government agencies.

70. Infogroup takes measures to protect its proprietary databases from unauthorized access, both by maintaining physical and electronic security of its computer system, by limiting user access to those with authorized usernames and passwords, by limiting employee access to proprietary information, and by requiring employees with access to proprietary information and equipment containing proprietary information to sign nondisclosure agreements. These agreements limit the scope of employees' authority to use information housed on Infogroup's protected computers.

71. To protect its proprietary databases and to monitor potential unauthorized access to such databases by competitors, Infogroup occasionally inserts so-called "seed data" into its databases. Each seed data file typically consists of fictitious name, address, and phone number combinations. If seed data listings ever appear in lists sold or offered for sale by a competitor, it is considered proof that the competitor has gained unauthorized access to Infogroup's protected databases.

72. Infogroup identified seed data in the databases it purchased from Mr. Span and Mr. Gunter.

73. Defendants were not and are not authorized to access Infogroup's protected computer systems or its proprietary databases in any form.

74. On information and belief, the only way for Defendants to have accessed Infogroup's seed data is through intentional and unauthorized access of Infogroup's proprietary databases. As a result, Defendants have unlawfully obtained information from a protected computer system.

75. Defendants' conduct violates the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(a)(2)(C) and (a)(4).

76. As a result of Defendants' unauthorized access of Infogroup's proprietary databases, Infogroup has suffered losses, to be determined at trial but exceeding \$5,000 during a one-year period.

77. Also as a result of Defendants' unauthorized access of Infogroup's proprietary databases, Infogroup has suffered and will continue to suffer irreparable harm, for which no adequate remedy exists at law.

78. Each Defendant also has contributory and vicarious liability for these acts. With knowledge of the illegal activity, each Defendant intentionally engaged in the conduct described above and continued to undertake in these acts. Similarly, each Defendant had the right and ability to control the illegal activity and received a direct financial benefit from the activity.

**COUNT VI**  
**Violation of the Washington Uniform Trade Secrets Act**  
**RCW 19.108 *et seq.***

79. Infogroup realleges and incorporates by this reference each and every allegation set forth in paragraphs above.

80. Infogroup's databases qualify as a protected compilation of trade secrets under RCW 19.108.010(4).

1           81.     Infogroup's data compilations derive independent economic value from not  
2 being generally known or readily ascertainable to others who could obtain economic value  
3 from their disclosure or use.

4           82.     Infogroup expends significant effort and expense in compiling its databases,  
5 employing a staff of more than 400 to keep its listings accurate and current.

6           83.     Additionally, Infogroup has undertaken reasonable efforts to maintain the  
7 secrecy of its data compilations, including maintaining the physical and electronic security of  
8 its computer system, limiting employee access to proprietary information, requiring employees  
9 with access to proprietary databases to sign nondisclosure agreements, and limiting customer  
10 access to its databases to customers with authorized usernames and passwords.

11           84.     By expending significant effort and resources to amass thousands of business  
12 listings into unique and security-protected data compilations, Infogroup has developed  
13 databases that have independent economic value and are not readily ascertainable to others.  
14 Infogroup's data compilations are protected trade secrets.

15           85.     Defendants have misappropriated Infogroup's trade secrets by accessing them  
16 without authorization and marketing and selling those trade secrets.

17           86.     Defendants' misappropriation of Infogroup's trade secrets has damaged and is  
18 causing irreparable harm to Infogroup, and no adequate remedy exists at law.

19           87.     Infogroup seeks injunctive relief under RCW 19.108.020(1) to stop Defendants'  
20 actual and continued misappropriation. In addition, Infogroup asks the Court to take  
21 affirmative action under RCW 19.108.020(3) to compel protection of its trade secrets.

22           88.     Because Defendants have acted willfully and maliciously, Infogroup also seeks  
23 an award of exemplary damages under RCW 19.108.030(2) for twice the amount of its loss  
24 caused by Defendants' misappropriation.

25           89.     Each Defendant also has contributory and vicarious liability for these acts. With  
26 knowledge of the illegal activity, each Defendant intentionally engaged in the conduct  
27 described above and continued to undertake in these acts. Similarly, each Defendant had the

1 right and ability to control the illegal activity and received a direct financial benefit from the  
2 activity.

3 **COUNT VII**  
4 **Violation of the Washington Consumer Protection Act**  
5 **RCW 19.86 *et seq.***

6 90. Infogroup realleges and incorporates by this reference each and every allegation  
7 set forth in paragraphs above.

8 91. Defendants' unauthorized use of Infogroup's name to promote, market, or sell  
9 its products or services, and Defendants' unauthorized access to and sales of Infogroup's data  
10 compilations, constitute unfair and deceptive business practices under RCW 19.86 *et seq.*  
11 Through their unauthorized use of Infogroup's name and unauthorized access to and sales of  
12 Infogroup's proprietary and trade secret data compilations, Defendants have engaged in unfair  
13 or deceptive acts or practices, in trade or commerce, that impact the public interest, and that  
14 have caused injury to Infogroup's business and property.

15 92. Defendants' unfair and deceptive acts and business practices have caused and  
16 will continue to cause damage to Infogroup, and are causing irreparable harm to Infogroup, for  
17 which there is no adequate remedy at law.

18 93. Defendants have violated RCW 19.86 *et seq.*, and Infogroup is entitled to  
19 injunctive relief, actual and treble damages, and attorneys' fees and costs.

20 94. Each Defendant also has contributory and vicarious liability for these acts. With  
21 knowledge of the illegal activity, each Defendant intentionally engaged in the conduct  
22 described above and continued to undertake in these acts. Similarly, each Defendant had the  
23 right and ability to control the illegal activity and received a direct financial benefit from the  
24 activity.

25 **COUNT VIII**  
26 **Conversion**

27 95. Infogroup realleges and incorporates by this reference each and every allegation  
set forth in paragraphs above.

1           96. By acquiring Infogroup's proprietary databases without authorization and then  
2 marketing them for sale, Defendants exercised improper domain and control over Infogroup's  
3 property and have committed the common law tort of conversion.

4           97. Defendants' actions demonstrate the willful, unjustified interference with a  
5 chattel that Infogroup was entitled to possess, thereby depriving Infogroup of such possession.

6           98. Defendants' conversion of Infogroup's proprietary data compilations has caused  
7 and will continue to cause damage to Infogroup, and is causing irreparable harm, for which  
8 there is no adequate remedy at law.

9           99. Each Defendant also has contributory and vicarious liability for these acts. With  
10 knowledge of the illegal activity, each Defendant intentionally engaged in the conduct  
11 described above and continued to undertake in these acts. Similarly, each Defendant had the  
12 right and ability to control the illegal activity and received a direct financial benefit from the  
13 activity.

#### 14                                   **COUNT IX** 15                                   **Trespass to Chattels**

16           100. Infogroup realleges and incorporates by this reference each and every allegation  
17 set forth in paragraphs above.

18           101. By accessing Infogroup's protected computer systems and by acquiring  
19 Infogroup's proprietary data compilations, Defendants have committed the common law tort of  
20 trespass to chattels.

21           102. Defendants' actions constitute unjustified, intentional interference with  
22 Infogroup's personal property, and deprive Infogroup, as the owner, of possession or use.  
23 Defendants have dispossessed Infogroup of its property in the data compilations and have  
24 intermeddled with Infogroup's protected computer systems.

25           103. Defendants' trespass has harmed and will continue to harm Infogroup's valuable  
26 interest in the physical condition, quality, and value of its data compilations as property.  
27

1 Defendants' trespass is also causing irreparable harm, for which there is no adequate remedy at  
2 law.

3 104. Each Defendant also has contributory and vicarious liability for these acts. With  
4 knowledge of the illegal activity, each Defendant intentionally engaged in the conduct  
5 described above and continued to undertake in these acts. Similarly, each Defendant had the  
6 right and ability to control the illegal activity and received a direct financial benefit from the  
7 activity.

8 **COUNT X**  
9 **Unjust Enrichment**

10 105. Infogroup realleges and incorporates by this reference each and every allegation  
11 set forth in paragraphs above.

12 106. Defendants' actions have resulted in retaining money or benefits that in justice  
13 and equity belong to Infogroup. Defendants have received a benefit by using Infogroup's name  
14 and proprietary data compilations, at Infogroup's expense, and circumstances make it unjust for  
15 Defendants to retain the benefit without payment to Infogroup.

16 107. Defendants have been unjustly enriched at Infogroup's expense.

17 108. As a result, Infogroup has been damaged in an amount to be proven at trial.

18 **V. REQUEST FOR RELIEF**

19 Plaintiffs request the following relief:

20 A. Judgment in favor of Infogroup on Counts I through X above.

21 B. An injunction prohibiting Defendants from using Infogroup's name and  
22 copyrighted materials; from accessing, marketing, and selling Infogroup's proprietary  
23 databases; and from operating the offending websites: leadproducers.net,  
24 secretsalesformula.com, supremesalesmaster.com, and costnet.com.

25 C. An award of actual damages to be proven at trial.

26 D. An order requiring Defendants to disgorge all financial benefits, including  
27 profits, realized by Defendants as a result of their wrongful conduct.



1 E. An award of costs and reasonable attorneys' fees incurred in this action.

2 F. Such other and further relief as the court deems just and proper.

3  
4 DATED this 13<sup>th</sup> day of January, 2014.

5 Davis Wright Tremaine LLP  
6 Attorneys for Plaintiffs

7  
8 By s/ Warren J. Rheaume  
Warren J. Rheaume, WSBA #13627  
9 By s/ Rebecca Francis  
Rebecca Francis, WSBA #41196  
10 1201 Third Avenue, Suite 2200  
Seattle, WA 98101-3045  
11 Telephone: (206) 622-3150  
Fax: (206) 757-7000  
12 E-mail: warrenrheaume@dwt.com  
rebeccafrancis@dwt.com  
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